

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ISRAEL SANTIAGO-LUGO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 11-1363 (JAF)

(Crim. No. 95-029-1)

ORDER

Petitioner, Israel Santiago-Lugo, requests a certificate of appeal (“COA”) from our denial of his petition for writ of coram nobis or, in the alternative, audita querela (Docket No. 1). (Docket No. 23.)

Petitioner initially presented three claims for relief under these writs. (Docket No. 1.) We recharacterized two of Petitioner’s claims as seeking § 2255 relief and denied them as successive petitions filed without prior certification by the Court of Appeals, see § 2255(h). (Docket No. 11.) In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever we deny § 2255 relief we must concurrently determine whether to issue a COA. We grant a COA only upon “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Petitioner’s latest filing presents no argument that would lead us to believe

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1 that our recharacterization of his claims was in error. Thus, we see no way in which a
2 reasonable jurist could find our assessment of Petitioner's constitutional claims debatable or
3 wrong. Petitioner may request a COA directly from the First Circuit, pursuant to Rule of
4 Appellate Procedure 22.

5 Petitioner cannot receive a COA for our denial of his third claim, a challenge to criminal
6 forfeiture. This challenge to forfeiture was considered as a request for writs of coram nobis and
7 audita querela. (See Docket No. 11.) These common-law writs are available pursuant to the
8 All Writs Act, 28 U.S.C. § 1651; claims properly brought under these writs are not governed
9 by the restrictions of § 2255 and do not require the granting of a COA prior to appeal.

10 For the foregoing reasons, we hereby **DENY** Petitioner's motion for COA (Docket
11 No. 23).

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 4th day of August, 2011.

14 s/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 United States District Judge